

**FILED**

JAN 03 2022

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CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY  DEPUTY CLERK

**EASTERN DISTRICT OF CALIFORNIA FRESNO**

PHILIP SANDERS

Plaintiff

Correctional officer vang etal  
Intake nurse Janet Smith etal  
Sheriff Margaret Mims etal  
infirmery doctor UN  
infirmery nurse UN  
Defendant

Case No.: Case 1:20-cv-00634-NONE-SAB

**FIRST AMENDED COMPLAINT**

1 Plaintiff is a individual and citizen of the United States

2 defendants are correctional officers and medical staff employees of the county of Fresno sheriff  
department

3 cleanest allege defendants were acting while on duty as employees of Fresno county sheriff's  
department

4 plaintiff is bringing this claim against defendants and official capacity under civil rights  
claim section 440 cause of action section 42 USC 1983 depriving persons of civil rights under the  
color of law for convicted detainee for violations of 8th amendment cruel and unusual punishment  
and civil rights claim section 446 for violations of American with disability act Prisoners are protected  
by § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and by Title II of the Americans with Disabilities  
Act, 42 U.S.C. § 12131 municipal liability under *Monel*

5 the court has jurisdiction to hear subject matter because it is a federal question according to  
article 3 section 2 of The Constitution

6 plaintiff praise for monetary damages \$250,000 compensatory damages \$250,000

7 Attach exhibit grievance page 7

Summary statement

I would hope the courts would be extremely concerned how allegations of federal question  
can manifest so rapidly spiral out of control and produce such inhumane actions rather it be

FIRST AMENDED COMPLAINT - 1

individual employees actions or policy economic issues to curve the financial obligations of the jails medical expense no one should have to suffer the deliberate acts of either one personally I feel the cost and expense of a inhaler is too high to issue to a inmate during the Booking intake process even if the inmates medical records are easily accessible the inmate may make bail so the medical intake process cuts corners to reduce the financial impact in my particular case it's spiraled out of control into a gas chamber like situation no one should have to suffer inhumane treatment be it personal acts of employees or ask to curve the financial expensive of the jail medical infirmary

#### Claim statement under penalty of perjury

Plaintiff was booked in county jail on 4 /20/ 2018 plaintiff of surrendered all personal property then obtained his booking sheet and continued with the medical assessment from RN Janet smith before being assigned a bump during that medical interview plaintiff explained during medical interview with intake RN smith Prior to the arrest plaintiff was on social security disability for degenerative disc well as bronchial asthma and plaintiff medical history should be in the computer from previous arrest plus plaintiff asthma was so serious he had a medical base so that my PG&E could not be disconnected even if my payments were late

plaintiff requested pain medication for degenerative disc well as asthma pump for chronic bronchial asthma intake RN smith reviewed the medical history on the computer added pain medication to the medical chart so that plaintiff could receive his normal dosage then intake RN smith advised plaintiff asthma pumps were no longer being issued to inmates do to inmates using them for drugs and if he had any tightening in the chest and needed treatment to inform the floor co and request to go to the infirmary for breathing treatment

as a result of the excitement of the arrest plaintiff requested to go to the infirmary during the medical interview the booking RN smith medical then finish all the medical paperwork and sent plaintiff to the infirmary where he received a oxygen level test around 90 % and a full breathing treatment when the breathing treatment was complete plaintiff returned to the booking department where you received full dress outs then issued a bunk plaintiffs pain medication was properly available during every med call but plaintiff asthma medication was not provided the intake registered nurse smith systematically did not enter asthma inhaler prescription into the booking intake medical computer so that the inhaler prescription would be available even after telling her my inhaler was prescribed by my doctor on the streets well as the jail doctor in my previous arrest

triggering the first violation against intake RN smith for civil rights claim section 440 cause of action section 42 USC 1983 depriving persons of civil rights under the color of law for convicted detainee for violations of 8th amendment cruel and unusual punishment and civil rights claim section 446 for violations of American with disability act not providing medication prescribed for my disability

1  
2 All most every other night I began to get a tightness in my chest and went to the infirmary for  
3 numerous breathing treatments at first plaintiff thought the tightness was because of excitement  
4 of the unlawful arrest and or probation violation that was dropped after speaking with other  
inmates I found out the shedding wool blankets triggered my asthma

5 around 4/25/2018 I filed a inmate request slip I needed my inhaler plus none wool blanket after  
6 getting not response 2 days later a second incident happened around 4/27/2018 with CO vang  
7 This particular day the count took a extremely long period to clear there seem to be a riot on the  
8 fourth level between two rival gangs so the floor captains restricted movement on all levels in order  
to keep the inmates completely separated

9 point being I made numerous attempts on 4/27/2018 to get to the infirmary around the 2nd or 3rd  
10 attempt correctional officer vang deliberately lie telling me the infirmary cells were completely full  
11 because of the riot and I had to wait even longer none the less when I finally went to the infirmary  
12 all the cells were empty I asked the medical staff how many inmates they had before me the nurse  
said they had few to none inmates in the cell for hours so I filed a grievance on 4/29/2018 The  
grieving gave the date of the incident as 4/27/ 2018 I wrote on the grievance form word for word

13  
14 I need a inhaler I asked for one the first day I was booked in on 4/20/18 I was refused and in gave me  
15 breathing treatment before I got dressed out and came upstairs I was told to tell floor officer if I needed a  
16 treatment when I asked floor officer Vang on 4/ 27/18 she said she could not send me until count cleared  
after count cleared she told me med cells we're full and I had to wait longer refusing inhaler and treatment  
is against disability act put inhaler in lock box on every floor signed by Philip Sanders on 4/29/18

17 clearly in that grievance I was suggesting a way for the inmates to have their inhalers close by when  
18 floor officer vang told me all the cells were full they med staff told me they only had a  
19 few patience that evening then I begin to realize that floor correctional officer Vang was  
20 intentionally lying seemingly tired from working a double shift just didn't care so I filed a  
grievance

21 triggering a second violation against CO vang civil rights claim section 440 cause of action  
22 section 42 USC 1983 depriving persons of civil rights under the color of law for convicted  
23 detainee for violations of 8th amendment cruel and unusual punishment This deliberate act  
24 caused me unnecessary suffering directly contributing to 8th amendment right clue and  
unusual punishment of the intake Rn smith acts of disregard

25 After the grievance was filed on 4/24/2018 the infirmary doctor name unknown seemingly in  
26 retaliation called me for a chest x-ray around 5/1/2018 and threatened me with confinement in the  
27 medical cell until I took a chest Xray a retaliation act intended to determine if I was faking I  
28 explained to the nurse my bronchial asthma had already been diagnosed as a part of my disability

1 and you would be no need to expose me to x-ray radiation I also told the nurse my oxygen level  
2 should be enough

3 simply put when the results from the Xray came back the infirmary doctor called me in to the office  
4 determined I had narrow passages I received another breathing treatment and the doctor  
5 prescribed the inhaler to be placed on the medical chart for daily medical call medication  
6 treatment it took almost 11 days and exposure to Xray radiation for the jail to confirm what they  
7 already had in my medical records or could have been confirmed thru my social security disability  
8 doctors prescription

9 To make things worse when I return to my cell that same day 3 hours when by and medical call RN  
10 unknown name came I went to get my inhaler treatment and the medical call RN forgot to put the  
11 inhaler prescription on the medical cart the RN expressed his sympathy said I'm sorry and told me I  
12 would be back soon as I finished med call rounds with your inhaler some what reckless RN should  
13 have went right to the inhaler he forgot

14 I waited in the day room around an 1 hour 1/2 but before the registered nurse did not return then  
15 out off nowhere a fight broke out the co in the cage got on the loudspeaker and ordered everyone  
16 to get down on the floor in place wherever they were then locked all the cell doors I ended up face  
17 down in the day room around 20 ft from my cell door the goon squad came separated the inmates  
18 while one female correctional officer attempted to pepper spray both inmates while they were  
19 being separated the pepper spray covered the entire day room

20 that instantly triggered my asthma my eyes were burning and I was coughing everyone in the  
21 dayroom was coughing and choking as the goon squad separated the inmates one by one they  
22 ordered inmates back into their 3 man cell bunks I repeatedly push the medical alert button in the  
23 cell telling the correctional officer in the cage I had asthma and I needed my asthma pump I was  
24 pacing the floor using cold water to slow the coughing choking after

25 about 30 minutes past the medical call registered nurse that forgot my inhaler on the cart came and  
26 put the inhaler in my hand while I remained in my cell then by the grace of god I was called to bail  
27 out when home and gave myself a breathing treatment when I look back at how all the events  
28 unfolded waiting and suffering without my asthma medication I began to recognize the jail had no  
policy or training that would properly deal with disable inmates with asthma during riots involving  
pepper spray that would lessen the impact of cruel and unusual punishment that could lead to  
death if not addressed

1 triggering a third violation against sheriff Marget Mimms civil rights claim section 440 cause of  
2 action section 42 USC 1983 depriving persons of civil rights under the color of law for convicted  
3 detainee for violations of 8th amendment cruel and unusual punishment

4 Conclusion

5 The Fresno county jail asthma inhaler policy should never change the jail into a gas chamber

6  
7 The Eighth Amendment applies to inmate medical treatment because it not only prohibits excessive  
8 force but also requires that **prisoners be afforded "humane conditions of confinement,"** so that  
9 prison officials "ensure that inmates receive adequate food, clothing, shelter, and medical care."  
10 Farmer v. Jan 24, 2019

11 The American disability act Ada forbids companies well as entities for discriminating against persons  
12 with disabilities oftentimes requiring entities and businesses to provide handicap persons with proper  
13 access and accessibility to persons with disabilities disabled people who are providing with medical  
14 prescriptions should have accessibility to all prescribe medication in local jails and prison under  
15 pretrial detainee 14th amendment due process and convicted detainee 8th amendment cruel and  
16 unusual punishment

17 Statutes protecting disabled prisoners

18 Prisoners are protected by § 504 of the Rehabilitation Act of 1973, 29 U.S.C. §  
19 794(a), and by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131,  
20 et seq.

21 1 The Rehabilitation Act was created to apply to federal executive agencies, including the  
22 Bureau of Prisons, and to any program that receives  
23 federal funding. The ADA was created to regulate state and local government programs,  
24 even those that do not receive federal funding.

25 The Supreme Court recently held in Goodman v. Georgia that Title II of the ADA validly  
26 abrogates state sovereign immunity – as least insofar as it creates a  
27 private cause of action for damages for conduct that actually violates the

28 Fourteenth Amendment. 2 In the prison context, this means that a disabled prisoner who is  
incarcerated in state prison may sue the state for monetary  
damages under the ADA based on conduct that independently violates the Due Process  
Clause of the Fourteenth Amendment (incorporating the Eighth  
Amendment's prohibition on cruel and unusual punishment). Thus, although the ADA  
arguably prohibits a broader swath of state conduct than what is barred by

1 the Eighth Amendment, it remains an unsettled question whether disabled prisoners can  
2 seek damages for conduct that violates the ADA but not the  
3 Constitution.<sup>3</sup>

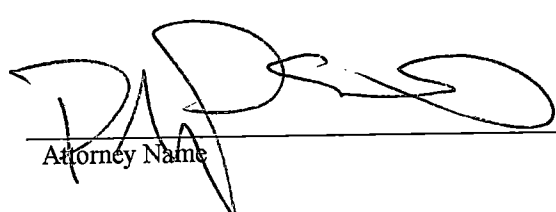
4 Plaintiffs can show a "governmental policy or custom" sufficient to establish municipal liability  
5 under *Monell* in one of four ways. Plaintiffs can allege:

- 6 (1) the existence of a formal policy which is officially endorsed by the municipality;  
7 (2) actions taken or decisions made by municipal officials with final decision making authority,  
8 which caused the alleged violation of plaintiff's civil rights;  
9 (3) a practice so persistent and widespread that it constitutes a custom of which constructive  
10 knowledge can be implied on the part of the policymaking officials; or  
11 (4) a failure by policymakers to properly train or supervise their subordinates, amounting  
12 to "deliberate indifference" to the rights of those who come in contact with the municipal  
13 employees.

14 Mere allegations that a municipality has a policy or custom that violated a plaintiff's rights are  
15 insufficient to hold a municipality liable under §1983, rather it must be proven that the policy or  
16 custom not only caused the complained of constitutional violation, but exhibits a "deliberate  
17 indifference" to citizens' rights. *Dwares v. City of New York*, 985 F.2d. 94, 100-101 (2d Cir.  
18 1993)

19 that being said these are not mere allegations medical records providing prescriptions are facts of  
20 the records therefore plaintiff has met standard to bring a conative claims

21  
22  
23 Dated this day of Month, year.

24  
25  
26  
27  
28  
  
\_\_\_\_\_  
Attorney Name

2. 10. 1947

Name of Employee(s) (if involved in grievance): John Doe Title/Rank Police Officer

Name of Witness(es): 2.0 Wang, Hs Housing Location - Facility/Floor/Cell 5th Floor

Date: Time and Location of Incident Relating to Grievance: 4/12/18 M<sup>o</sup> 5th 12:00pm

<input type="checkbox"/> ADA/Disability	<input type="checkbox"/> Disciplinary	<input type="checkbox"/> Maintenance	<input type="checkbox"/> Money	<input type="checkbox"/> Sexual Abuse
<input type="checkbox"/> Classification	<input type="checkbox"/> Food	<input checked="" type="checkbox"/> Medical	<input type="checkbox"/> Officer Conduct	<input type="checkbox"/> Telephone
<input type="checkbox"/> Clothing/Bedding	<input type="checkbox"/> Legal Services	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Property	<input type="checkbox"/> Visiting
<input type="checkbox"/> Commissary	<input type="checkbox"/> Mail	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Sanitation	

You have fourteen (14) calendar days from the date the incident occurred to submit a grievance. Exceptions shall be made for discipline grievances (limited to 48-hours from the time of notification of the hearing outcome) and grievances regarding sexual abuse (no time limitation). Filing repetitive, cumulative and/or frivolous grievances may result in the restriction of your right to file further grievances. You may not grieve the decision on a previous grievance regarding the same matter.

Describe the important details about the problem in a clear and understandable manner. Indicate the events, reasons, and relevant information that led you to file this grievance. State all relief that you are seeking (i.e., what action or outcome do you want?). Use and attach additional paper, if necessary. Include any report numbers, as applicable.

I NEED A INHALER I asked for  
the first day I was Booked in on 4/20/19  
I WAS VENTURED AND RN GAVE THE BREATH  
TREATMENT Before I got Drips out AND while  
up stairs I WAS TOLD TO call doctor if  
I needed a treatment when I called  
Nurse on 4/27/19 she said she couldn't find  
me until she called RN AGO RN came cleared  
she told me also calls were call RN I  
to call RN for release INH. AND treatment  
IS ANOTHER DISHONEST ACT DISHONESTLY

I CERTIFY THESE STATEMENTS TO BE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY.

CERTIFY THESE STATEMENTS TO BE TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Signature of Inmate: [Signature] Date: 7/29/13 Time Submitted: 9:20

NOTE: If this form has not been properly completed, it will be returned to you for completion prior to the initiation of an investigation.

TO BE COMPLETED BY ACCEPTING STAFF MEMBER ONLY

☐ I was able to rectify the inmate's grievance and took the following action: \_\_\_\_\_

Signature of Receiving Officer	Computer Number	Date	Time/Shift Received
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☐ The above action is acceptable to me and I would like to withdraw my grievance:

Signature of Inmate: <u>[Signature]</u>		Computer Number <u>3910</u>		Date <u>4/30/2018</u>		Time/Shift Received <u>II</u>	
<input type="checkbox"/> I am unable to resolve the grievance at my level:							
Signature of Receiving Officer <u>[Signature]</u>		Computer Number		Date		Time/Shift Received	